

Exhibit 10-R A &E Sample Contract Language

(NOTE TO LOCAL AGENCY - BE SURE THAT YOUR LEGAL STAFF REVIEWS AND APPROVES ALL CONSULTANT CONTRACTS BEFORE EXECUTION. THIS CONTRACT LANGUAGE IS ONLY SUGGESTED LANGUAGE. MODIFY AS RECOMMENDED BY YOUR OWN LEGAL STAFF AND TO FIT YOUR PARTICULAR REQUIREMENTS AND PROJECT.)

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A&E SAMPLE CONTRACT LANGUAGE

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ARTICLE I INTRODUCTION

- A. This contract is between the following named, hereinafter referred to as, CONSULTANT and the following named, hereinafter referred to as, LOCAL AGENCY:

The name of the CONSULTANT is as follows:

Incorporated in the State of (NAME OF STATE)

The Project Manager for the "CONSULTANT" will be (NAME)

The name of the "LOCAL AGENCY" is as follows:

The Contract Manager for the LOCAL AGENCY will be (NAME)

- B. The work to be performed under this contract is described in Article II entitled Statement of Work and the approved CONSULTANT's Cost Proposal dated (DATE). The approved CONSULTANT's Cost Proposal is attached hereto (Attachment I) and incorporated by reference. If there is any conflict between the approved Cost Proposal and this contract, this contract shall take precedence.
- C. The CONSULTANT agrees to indemnify and hold harmless the LOCAL AGENCY, its officers, agents, and employees from any and all claims, demands, costs, or liability arising from or connected with the services provided hereunder due to negligent acts, errors, or omissions of the CONSULTANT. The CONSULTANT will reimburse the LOCAL AGENCY for any expenditure, including reasonable attorney fees, incurred by the LOCAL AGENCY in defending against claims ultimately determined to be due to negligent acts, errors, or omissions of the CONSULTANT.
- D. The CONSULTANT and the agents and employees of CONSULTANT, in the performance of this agreement, shall act in an independent capacity and not as officers or employees or agents of the LOCAL AGENCY.
- E. The LOCAL AGENCY may terminate this agreement with CONSULTANT should CONSULTANT fail to perform the covenants herein contained at the time and in the manner herein provided. In the event of such termination, the LOCAL AGENCY may proceed with the work in any manner deemed proper by the LOCAL AGENCY. If the LOCAL AGENCY terminates this agreement with the CONSULTANT, LOCAL AGENCY shall pay CONSULTANT the sum due the CONSULTANT under this agreement prior to termination, unless the cost of completion to the LOCAL AGENCY exceeds the funds remaining in the contract. In which case the overage shall be deducted from any sum due the CONSULTANT under this agreement and the balance, if any, shall be paid the CONSULTANT upon demand.
- F. Without the written consent of the LOCAL AGENCY, this agreement is not assignable by CONSULTANT either in whole or in part.
- G. No alteration or variation of the terms of this contract shall be valid, unless made in writing and signed by the parties hereto; and no oral understanding or agreement not incorporated herein, shall be binding on any of the parties hereto.
- H. The consideration to be paid CONSULTANT as provided herein, shall be in compensation for all of CONSULTANT's expenses incurred in the performance hereof, including travel and per diem, unless otherwise expressly so provided.

ARTICLE II STATEMENT OF WORK

(INSERT APPROPRIATE STATEMENT OF WORK INCLUDING A DESCRIPTION OF THE DELIVERABLES)

A Consultant Services

Detail based on the services to be furnished should be provided by the CONSULTANT. Nature and extent should be verified in the negotiations to make precise statements to eliminate subsequent uncertainties and misunderstandings. Reference to the appropriate standards for design or other standards for work performance stipulated in the CONSULTANT Agreement should be included. Describe acceptance criteria, and if the responsible CONSULTANT/engineer shall sign all Plans, Specifications and Estimate (PS&E) and engineering data furnished under the contract including registration number. Environmental documents are not considered complete until a Caltrans District SEP signs the Categorical Exclusion (CE), a Caltrans Deputy District Director signs the Finding of No Significant Impact (FONSI), or the Caltrans District Director signs the Record of Decision (ROD) (see Chapter 6, “*Environmental Procedures*,” in the LAPM and the *Standard Environmental Reference* [SER]).

B Right of Way

State whether Right of Way requirements are to be determined and shown by the CONSULTANT, whether land surveys and computations with metes and bounds descriptions are to be made, and whether Right of Way plots are to be furnished.

C Subsurface Investigations

State specifically whether or not the CONSULTANT has responsibility for making subsurface investigations. If borings or other specialized services are to be made by others under the supervision of the CONSULTANT, appropriate provisions are to be incorporated. Archaeological testing and data recovery guidance can be found in the SER.

D Local Agency Obligations

All data applicable to the project and in possession of the LOCAL AGENCY or another agency, or government that are to be made available to the CONSULTANT are referred to in the agreement. Any other assistance or services to be furnished to the CONSULTANT are to be stated clearly.

E Conferences, Visits to Site, Inspection of Work

The agreement provides for conferences as needed, visits to the site, and inspection of the work by representatives of the state, or FHWA. Costs incurred by CONSULTANT for meetings, subsequent to the initial meeting shall be included in the fee.

F Checking Shop Drawings

For agreements requiring the preparation of construction drawings, make provision for checking shop drawings. Payment for checking shop drawings by the CONSULTANT may be included in the contract fee, or provision may be made for separate payment.

G Documentation

Agreements where appropriate, shall provide that the CONSULTANT document the results of the work to the satisfaction of the LOCAL AGENCY, and if applicable, the state and FHWA. This may include preparation of progress and final reports, plans, specifications and estimates, or similar evidence of attainment of the agreement objectives.

H Number of Copies

The number of copies of papers or documents to be furnished, such as reports, brochures, sets of plans, specifications, or Right of Way plots are specified. Provision may be made for payment for additional copies.

ARTICLE III CONSULTANT'S REPORTS AND/OR MEETINGS

(Choose either Option 1 or Option 2.)

(Option 1 - Use paragraphs A & B below for standard contracts.)

- A. The CONSULTANT shall submit progress reports at least once a month. The report should be sufficiently detailed for the Contract Manager to determine, if the CONSULTANT is performing to expectations, or is on schedule; to provide communication of interim findings, and to sufficiently address any difficulties or special problems encountered, so remedies can be developed.
- B. The CONSULTANT's Project Manager shall meet with the LOCAL AGENCY's Contract Manager, as needed, to discuss progress on the contract.

(Option 2 - Use paragraphs A & B below for on-call contracts.)

- A. The CONSULTANT shall submit progress reports on each specific project in accordance with the Task Order. These reports shall be submitted at least once a month. The report should be sufficiently detailed for the LOCAL AGENCY's Contract Manager and/or Project Coordinator to determine, if the CONSULTANT is performing to expectations, or is on schedule; to provide communication of interim findings, and to sufficiently address any difficulties or special problems encountered, so remedies can be developed.
- B. The CONSULTANT's Project Manager shall meet with the LOCAL AGENCY's Contract Manager or Project Coordinator, as needed, to discuss progress on the project(s).

ARTICLE IV PERFORMANCE PERIOD

(A time must be set for beginning and ending the work under the agreement. Usually, the beginning date is a given number of days after a letter of notification has been sent to the CONSULTANT. The time allowed for performing the work is specified; it should be reasonable for the kind and amount of services contemplated; and it is written into the agreement. If it is desirable that Critical Path Method (CPM) networks, or other types of schedules be prepared by the CONSULTANT, they should be identified and incorporated into the contract.

(Choose either Option 1 or Option 2.)

(Option 1 - Use paragraphs A & B below for standard and on-call contracts.)

- A. This contract shall go into effect on (DATE), contingent upon approval by the LOCAL AGENCY, and the CONSULTANT shall commence work after notification to proceed by the LOCAL AGENCY'S Contract Manager. The contract shall end on (DATE), unless extended by contract amendment.
- B. The CONSULTANT is advised that any recommendation for contract award is not binding on the LOCAL AGENCY until the contract is fully executed and approved by the LOCAL AGENCY.

(Option 2 - Use paragraph C below in addition to paragraphs A & B above for on-call contracts.)

- C. The period of performance for each specific project shall be in accordance with the Task Order for that project. If work on a Task Order is in progress on the expiration date of this contract, the terms of the contract may be extended by contract amendment.

ARTICLE V ALLOWABLE COSTS AND PAYMENTS

(Choose either Option 1, 2, 3, or 4.)

(Option 1 - Use paragraphs A through G below for standard contracts.)

- A. The method of payment for this contract will be based on actual cost-plus-a-fixed fee. The LOCAL AGENCY will reimburse the CONSULTANT for actual costs (including labor costs, employee benefits,

travel, equipment rental costs, overhead and other direct costs) incurred by the CONSULTANT in performance of the work. The CONSULTANT will not be reimbursed for actual costs that exceed the estimated wage rates, employee benefits, travel, equipment rental, overhead, and other estimated costs set forth in the approved CONSULTANT'S Cost Proposal, unless additional reimbursement is provided for by contract amendment. In no event, will the CONSULTANT be reimbursed for overhead costs at a rate that exceeds the LOCAL AGENCY's approved overhead rate set forth in the Cost Proposal. In the event, that the LOCAL AGENCY determines that a change to the work from that specified in the Cost Proposal and contract is required, the contract time and/or actual costs reimbursable by the LOCAL AGENCY shall be adjusted by contract amendment to accommodate the changed work. The maximum total cost as specified in Paragraph "H" shall not be exceeded, unless authorized by contract amendment.

- B. In addition to the allowable incurred costs, the LOCAL AGENCY will pay the CONSULTANT a fixed fee of \$(AMOUNT). The fixed fee is nonadjustable for the term of the contract, except in the event of a significant change in the scope of work and such adjustment is made by contract amendment.
- C. Reimbursement for transportation and subsistence costs shall not exceed the rates specified in the approved Cost Proposal.
- D. When milestone cost estimates are included in the approved Cost Proposal, the CONSULTANT shall obtain prior written approval for a revised milestone cost estimate from the Contract Manager before exceeding such cost estimate.
- E. Progress payments will be made monthly in arrears based on services provided and allowable incurred costs. A pro rata portion of the CONSULTANT's fixed fee will be included in the monthly progress payments. If CONSULTANT fails to submit the required deliverable items according to the schedule set forth in the Statement of Work, the LOCAL AGENCY shall have the right to delay payment and/or terminate this Agreement in accordance with the provisions of Article VI Termination.
- F. No payment will be made prior to approval of any work, nor for any work performed prior to approval of this contract.
- G. The CONSULTANT will be reimbursed, as promptly as fiscal procedures will permit upon receipt by the LOCAL AGENCY's Contract Manager of itemized invoices in triplicate. Invoices shall be submitted no later than 45-calendar days after the performance of work for which the CONSULTANT is billing. Invoices shall detail the work performed on each milestone and each project as applicable. Invoices shall follow the format stipulated for the approved Cost Proposal and shall reference this contract number and project title. Final invoice must contain the final cost and all credits due the LOCAL AGENCY including any equipment purchased under the provisions of Article XVI Equipment Purchase of this contract. The final invoice should be submitted within 60-calendar days after completion of the CONSULTANT's work. Invoices shall be mailed to the LOCAL AGENCY's Contract Manager at the following address:

(LOCAL AGENCY/NAME OF CONTRACT MANAGER)
(ADDRESS)

- H. The total amount payable by the LOCAL AGENCY including the fixed fee shall not exceed \$(Amount).
- I. Salary increases will be reimbursable if the new salary is within the salary range identified in the approved Cost Proposal and is approved by the LOCAL AGENCY's Contract Manager.

For personnel subject to prevailing wage rates as described in the California Labor Code, all salary increases, which are the direct result of changes in the prevailing wage rates are reimbursable.
- J. All subcontracts in excess of \$25,000 shall contain the above provisions.

(Option 2- When specified rates of payment are to be made for certain items, replace paragraphs A & B of Option 1 with the following paragraphs A, B, and C and reletter the remaining paragraphs. Adjust as necessary for items specific to your project.)

- A. The method of payment for the following items shall be at the rate specified for each item, as described in this Article. The specified rate shall include full compensation to the CONSULTANT for the item as described, including but not limited to, any repairs, maintenance or insurance, and no further compensation will be allowed therefore.
- B. The specified rate to be paid for vehicle expense for CONSULTANT's field personnel shall be \$(Amount) per (Insert time period, usually day). This rate shall be for a fully equipped vehicle, with radio and flashing yellow light (if needed), as specified in Article II of this agreement.

The specified rate to be paid for equipment shall be, as listed in Attachment (Insert Attachment Number).

- C. The method of payment for this contract, except those items to be paid for on a specified rate basis, will be based on actual cost-plus-a-fixed fee. The LOCAL AGENCY will reimburse the CONSULTANT for actual costs (including labor costs, employee benefits, travel, equipment-rental costs, overhead and other direct costs) incurred by the CONSULTANT in performance of the work. The CONSULTANT will not be reimbursed for actual costs that exceed the estimated wage rates, employee benefits, travel, equipment rental, overhead and other estimated costs set forth in the approved Cost Proposal, unless additional reimbursement is provided for, by contract amendment. In no event, will the CONSULTANT be reimbursed for overhead costs at a rate that exceeds the LOCAL AGENCY approved overhead rate set forth in the approved Cost Proposal. In the event, the LOCAL AGENCY determines that changed work from that specified in the approved Cost Proposal and contract is required; the actual costs reimbursable by the LOCAL AGENCY may be adjusted by contract amendment to accommodate the changed work. The maximum total cost as specified in Paragraph "I," shall not be exceeded unless authorized by contract amendment.
- D. In addition to the allowable incurred costs and specified rates of payment, the LOCAL AGENCY will pay the CONSULTANT a fixed fee of \$(Amount). The fixed fee is nonadjustable for the term of the contract, except in the event of a significant change in the scope of work and such adjustment is made by contract amendment.
- E. All subcontracts in excess of \$25,000 shall contain the above provisions.

(Option 3 - Use paragraphs A through L below for on-call contracts.)

- A. Specific projects will be assigned to the CONSULTANT through issuance of Task Orders (Attachment II).
- B. After a project to be performed under this contract is identified by the LOCAL AGENCY, the LOCAL AGENCY will prepare a draft Task Order; less the cost estimate. A draft Task Order will identify the scope of services, expected results, project deliverables, period of performance, project schedule and will designate a LOCAL AGENCY Project Coordinator. The draft Task Order will be delivered to the CONSULTANT for review. The CONSULTANT shall return the draft Task Order within ten (10) calendar days along with a Cost Estimate, including a written estimate of the number of hours and hourly rates per staff person, any anticipated reimbursable expenses, overhead, fee if any, and total dollar amount. After agreement has been reached on the negotiable items and total cost; the finalized Task Order shall be signed by both the LOCAL AGENCY and the CONSULTANT.
- C. The CONSULTANT will be reimbursed for hours worked at the hourly rates specified in the CONSULTANT's Cost Proposal (Attachment Number). The specified hourly rates shall include direct salary costs, employee benefits, overhead, and fee.
- D. In addition, the CONSULTANT will be reimbursed for incurred direct costs other than salary costs, and other costs that are identified in the executed Task Order.

- E. Reimbursement for transportation and subsistence costs shall not exceed the rates as specified in the approved Cost Proposal.
- F. When milestone cost estimates are included in the approved Cost Proposal, the CONSULTANT shall obtain prior written approval for a revised milestone cost estimate from the Contract Manager before exceeding such estimate.
- G. Progress payments for each Task Order will be made monthly in arrears based on services provided and actual costs incurred.
- H. The CONSULTANT shall not commence performance of work or services until this contract has been approved by the LOCAL AGENCY, and notification to proceed has been issued by the LOCAL AGENCY'S Contract Manager. No payment will be made prior to approval or for any work performed prior to approval of this contract.
- I. A Task Order is of no force or effect until returned to the LOCAL AGENCY and signed by an authorized representative of the LOCAL AGENCY. No expenditures are authorized on a project and work shall not commence until a Task Order for that project has been executed by the LOCAL AGENCY.
- J. The CONSULTANT will be reimbursed, as promptly as fiscal procedures will permit upon receipt by the LOCAL AGENCY'S Contract Manager of itemized invoices in triplicate. Separate invoices itemizing all costs are required for all work performed under each Task Order. Invoices shall be submitted no later than 45-calendar days after the performance of work for which the CONSULTANT is billing, or upon completion of the Task Order. Invoices shall detail the work performed on each milestone, on each project as applicable. Invoices shall follow the format stipulated for the approved Cost Proposal and shall reference this contract number, project title and Task Order number. Credits due the LOCAL AGENCY that include any equipment purchased under the provisions of Article XVI Equipment Purchase of this contract, must be reimbursed by the Consultant prior to the expiration or termination of this contract. Invoices shall be mailed to the LOCAL AGENCY's Contract Manager at the following address:

(NAME OF LOCAL AGENCY/ NAME OF CONTRACT MANAGER)
(ADDRESS)

- K. The total amount payable by the LOCAL AGENCY for an individual Task Order shall not exceed the amount agreed to in the Task Order, unless authorized by contract amendment.
- L. The total amount payable by the LOCAL AGENCY for all Task Orders resulting from this contract, shall not exceed \$ (Amount). It is understood and agreed that there is no guarantee, either expressed or implied that this dollar amount will be authorized under this contract through Task Orders.
- M. All subcontracts in excess of \$25,000 shall contain the above provisions.

(Option 4 - Use paragraphs A through E below for lump sum contracts.)

- A. The method of payment for this contract will be based on lump sum. The total lump sum price paid the consultant will include compensation for all work and deliverables, including travel and equipment described in Article II Statement of Work of this contract. No additional compensation will be paid to the CONSULTANT, unless there is a change in the scope of the work or the scope of the project. In the instance of a change in the scope of work or scope of the project, adjustment to the total lump sum compensation will be negotiated between the Consultant and the LOCAL AGENCY. Adjustment in the total lump sum compensation will not be effective until authorized by contract amendment and approved by the LOCAL AGENCY.
- B. Progress payments may be made monthly in arrears based on the percentage of work completed by the CONSULTANT. If CONSULTANT fails to submit the required deliverable items according to the schedule set forth in the Statement of Work, the LOCAL AGENCY shall have the right to delay payment and/or terminate this Agreement in accordance with the provisions of Article VI Termination.

- C. The CONSULTANT shall not commence performance of work or services until this contract has been approved by the LOCAL AGENCY and notification to proceed has been issued by the LOCAL AGENCY'S Contract Manager. No payment will be made prior to approval of any work, or for any work performed prior to approval of this contract.
- D. The CONSULTANT will be reimbursed, as promptly as fiscal procedures will permit, upon receipt by the LOCAL AGENCY'S Contract Manager of itemized invoices in triplicate. Invoices shall be submitted no later than 45-calendar days after the performance of work for which the CONSULTANT is billing. Invoices shall detail the work performed on each milestone, on each project as applicable. Invoices shall follow the format stipulated for the Cost Proposal and shall reference this contract number and project title. Final invoice must contain the final cost and all credits due the LOCAL AGENCY that include any equipment purchased under the provisions of Article XVI Equipment Purchase of this contract. The final invoice should be submitted within 60-calendar days after completion of the CONSULTANT's work. Invoices shall be mailed to the LOCAL AGENCY's Contract Manager at the following address:

(LOCAL AGENCY/NAME OF CONTRACT MANAGER)
(ADDRESS)

- E. The total amount payable by the LOCAL AGENCY shall not exceed \$(Amount).
- F. All subcontracts in excess of \$25,000 shall contain the above provisions.

ARTICLE VI TERMINATION

The LOCAL AGENCY reserves the right to terminate this contract upon thirty (30)-calendar days written notice to the CONSULTANT with the reasons for termination stated in the notice.

ARTICLE VII FUNDING REQUIREMENTS

- A. It is mutually understood between the parties that this contract may have been written before ascertaining the availability of funds or appropriation of funds, for the mutual benefit of both parties, in order to avoid program and fiscal delays that would occur if the agreement were executed after that determination was made.
- B. This agreement is valid and enforceable only, if sufficient funds are made available to the LOCAL AGENCY for the purpose of this contract. In addition, this agreement is subject to any additional restrictions, limitations, conditions, or any statute enacted by the Congress, State Legislature or LOCAL AGENCY governing board that may affect the provisions, terms, or funding of this contract in any manner.
- C. It is mutually agreed that if sufficient funds are not appropriated, this contract may be amended to reflect any reduction in funds.
- D. The LOCAL AGENCY has the option to void the contract under the 30-day cancellation clause, or by mutual agreement to amend the contract to reflect any reduction of funds.

ARTICLE VIII CHANGE IN TERMS

- A. This contract may be amended or modified only by mutual written agreement of the parties.
- B. The CONSULTANT shall only commence work covered by an amendment after the amendment is executed and notification to proceed has been provided by the LOCAL AGENCY's Contract Manager.
- C. There shall be no change in the CONSULTANT's Project Manager or members of the project team, as listed in the approved Cost Proposal, which is a part of this contract without prior written approval by the LOCAL AGENCY's Contract Manager.

ARTICLE IX DISADVANTAGED BUSINESS ENTERPRISES (DBE) PARTICIPATION

(Use this Article when federal participating funds are used; incorporate Exhibits 10-I and 10-J as required.)

ARTICLE X COST PRINCIPLES

- A. The CONSULTANT agrees that the Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq., shall be used to determine the allowability of cost individual items.
- B. The CONSULTANT also agrees to comply with federal procedures in accordance with 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.
- C. Any costs for which payment has been made to CONSULTANT that are determined by subsequent audit to be unallowable under 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq., are subject to repayment by CONSULTANT to the LOCAL AGENCY.

ARTICLE XI CONTINGENT FEE

The CONSULTANT warrants, by execution of this contract that no person or selling agency has been employed, or retained, to solicit or secure this contract upon an agreement or understanding, for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees, or bona fide established commercial or selling agencies maintained by the CONSULTANT for the purpose of securing business. For breach or violation of this warranty, the LOCAL AGENCY has the right to annul this contract without liability; pay only for the value of the work actually performed, or in its discretion to deduct from the contract price or consideration, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.

ARTICLE XII RETENTION OF RECORDS/AUDIT

For the purpose of determining compliance with Public Contract Code 10115, et seq. and Title 21, California Code of Regulations, Chapter 21, Section 2500 et seq., when applicable and other matters connected with the performance of the contract pursuant to Government Code 8546.7; the CONSULTANT, subcontractors, and the LOCAL AGENCY shall maintain all books, documents, papers, accounting records, and other evidence pertaining to the performance of the contract, including but not limited to, the costs of administering the contract. All parties shall make such materials available at their respective offices at all reasonable times during the contract period and for three years from the date of final payment under the contract. The state, the State Auditor, LOCAL AGENCY, FHWA, or any duly authorized representative of the federal government shall have access to any books, records, and documents of the CONSULTANT that are pertinent to the contract for audit, examinations, excerpts, and transactions, and copies thereof shall be furnished if requested.

Subcontracts in excess of \$25,000 shall contain this provision.

ARTICLE XIII DISPUTES

(Choose either Option 1 or Option 2.)

(Option 1 - Use paragraphs A through D below for all contracts without PS&E submittal.)

- A. Any dispute, other than audit, concerning a question of fact arising under this contract that is not disposed of by agreement shall be decided by a committee consisting of the LOCAL AGENCY's Contract Manager and (Insert Department Head or Official), who may consider written or verbal information submitted by the CONSULTANT.

- B. Not later than 30 days after completion of all work under the contract, the CONSULTANT may request review by the LOCAL AGENCY GOVERNING BOARD of unresolved claims or disputes, other than audit. The request for review will be submitted in writing.
- C. Neither the pendency of a dispute, nor its consideration by the committee will excuse the CONSULTANT from full and timely performance in accordance with the terms of this contract.

(Option 2 - Replace Paragraph B, above, with the following for contracts requiring the submission of PS&E.)

- B. Not later than 30 days after completion of all deliverables necessary to complete the plans, specifications and estimate, the CONSULTANT may request review by the LOCAL AGENCY GOVERNING BOARD of unresolved claims or disputes, other than audit. The request for review will be submitted in writing.

ARTICLE XIV AUDIT REVIEW PROCEDURES

- A. Any dispute concerning a question of fact arising under an interim or post audit of this contract that is not disposed of by agreement, shall be reviewed by the LOCAL AGENCY'S CHIEF FINANCIAL OFFICER.
- B. Not later than 30 days after issuance of the final audit report, the CONSULTANT may request a review by the LOCAL AGENCY'S CHIEF FINANCIAL OFFICER of unresolved audit issues. The request for review will be submitted in writing.
- C. Neither the pendency of a dispute nor its consideration by the LOCAL AGENCY will excuse the CONSULTANT from full and timely performance, in accordance with the terms of this contract.

ARTICLE XV SUBCONTRACTING

- A. The CONSULTANT shall perform the work contemplated with resources available within its own organization; and no portion of the work pertinent to this contract shall be subcontracted without written authorization by the LOCAL AGENCY'S Contract Manager, except that, which is expressly identified in the approved Cost Proposal.
- B. Any subcontract in excess of \$25,000 entered into as a result of this contract, shall contain all the provisions stipulated in this contract to be applicable to subcontractors.
- C. Any substitution of subcontractors must be approved in writing by the LOCAL AGENCY's Contract Manager.

ARTICLE XVI EQUIPMENT PURCHASE

- A. Prior authorization in writing, by the LOCAL AGENCY's Contract Manager shall be required before the CONSULTANT enters into any unbudgeted purchase order, or subcontract exceeding \$5,000 for supplies, equipment, or CONSULTANT services. The CONSULTANT shall provide an evaluation of the necessity or desirability of incurring such costs.
- B. For purchase of any item, service or consulting work not covered in the CONSULTANT's Cost Proposal and exceeding \$5,000 prior authorization by the LOCAL AGENCY's Contract Manager; three competitive quotations must be submitted with the request, or the absence of bidding must be adequately justified.
- C. Any equipment purchased as a result of this contract is subject to the following: "The CONSULTANT shall maintain an inventory of all nonexpendable property. Nonexpendable property is defined as having a useful life of at least two years and an acquisition cost of \$5,000 or more. If the purchased equipment needs replacement and is sold or traded in, the LOCAL AGENCY shall receive a proper refund or credit at the

conclusion of the contract, or if the contract is terminated, the CONSULTANT may either keep the equipment and credit the LOCAL AGENCY in an amount equal to its fair market value, or sell such equipment at the best price obtainable at a public or private sale, in accordance with established LOCAL AGENCY procedures; and credit the LOCAL AGENCY in an amount equal to the sales price. If the CONSULTANT elects to keep the equipment, fair market value shall be determined at the CONSULTANT's expense, on the basis of a competent independent appraisal of such equipment. Appraisals shall be obtained from an appraiser mutually agreeable to by the LOCAL AGENCY and the CONSULTANT, if it is determined to sell the equipment, the terms and conditions of such sale must be approved in advance by the LOCAL AGENCY."

- D. All subcontracts in excess \$25,000 shall contain the above provisions.

ARTICLE XVII INSPECTION OF WORK

The CONSULTANT and any subcontractor shall permit the LOCAL AGENCY, the state, and the FHWA if federal participating funds are used in this contract; to review and inspect the project activities and files at all reasonable times during the performance period of this contract including review and inspection on a daily basis.

ARTICLE XVIII SAFETY

(Use on all contracts regardless of funding source)

- A. The CONSULTANT shall comply with OSHA regulations applicable to CONSULTANT regarding necessary safety equipment or procedures. The CONSULTANT shall comply with safety instructions issued by the LOCAL AGENCY Safety Officer and other LOCAL AGENCY representatives. CONSULTANT personnel shall wear hard hats and safety vests at all times while working on the construction project site.
- B. Pursuant to the authority contained in Section 591 of the Vehicle Code, the LOCAL AGENCY has determined that such areas are within the limits of the project and are open to public traffic. The CONSULTANT shall comply with all of the requirements set forth in Divisions 11, 12, 13, 14, and 15 of the Vehicle Code. The CONSULTANT shall take all reasonably necessary precautions for safe operation of its vehicles and the protection of the traveling public from injury and damage from such vehicles.
- C. Any subcontract entered into as a result of this contract, shall contain all of the provisions of this Article.

(Add to all contracts, which may require trenching of five feet or deeper.)

- D. CONSULTANT must have a Division of Occupational Safety and Health (CAL-OSHA) permit(s), as outlined in California Labor Code Sections 6500 and 6705, prior to the initiation of any practices, work, method, operation, or process related to the construction or excavation of trenches which are five feet or deeper.

ARTICLE XIX INSURANCE

(Choose either Option 1 or Option 2.)

(Option 1 - for Contracts with a scope of services that may require the Consultant or subcontractor to work within the operating state or Local Agency Highway Right of Way; where there would be exposure to public traffic or construction Consultan operations.)

- A. Prior to commencement of the work described herein, the CONSULTANT shall furnish the LOCAL AGENCY a Certificate of Insurance stating that there is general comprehensive liability insurance presently in effect for the CONSULTANT with a combined single limit (CSL) of not less than one million dollars (\$1,000,000) per occurrence.
- B. The Certificate of Insurance will provide:
 - 1. That the insurer will not cancel the insured's coverage without 30-days prior written notice to the LOCAL AGENCY.
 - 2. That the LOCAL AGENCY, its officers, agents, employees, and servants are included as additional insureds, but only insofar as the operations under this contract are concerned.
 - 3. That the LOCAL AGENCY will not be responsible for any premiums or assessments on the policy.
- C. The CONSULTANT agrees that the bodily injury liability insurance herein provided for, shall be in effect at all times during the term of this contract. In the event said insurance coverage expires at any time or times during the term of this contract, the CONSULTANT agrees to provide at least thirty (30) days prior notice to said expiration date; and a new Certificate of Insurance evidencing insurance coverage as provided for herein, for not less than either the remainder of the term of the contract, or for a period of not less than one (1) year. New Certificates of Insurance are subject to the approval of the LOCAL AGENCY. In the event the CONSULTANT fails to keep in effect at all times insurance coverage as herein provided, the LOCAL AGENCY may, in addition to any other remedies it may have, terminate this contract upon occurrence of such event.

(Option 2 - For Contracts with a scope of services that will not require the Consultant or subconsultant to work within the operating State or LOCAL AGENCY Highway Right of Way where there would be exposure to public traffic or construction Consultant operations.)

The CONSULTANT is not required to show evidence of general comprehensive liability insurance.

ARTICLE XX OWNERSHIP OF DATA

- A. Upon completion of all work under this contract, ownership and title to all reports, documents, plans, specifications, and estimates produce as part of this contract will automatically be vested in the LOCAL AGENCY; and no further agreement will be necessary to transfer ownership to the LOCAL AGENCY. The CONSULTANT shall furnish the LOCAL AGENCY all necessary copies of data needed to complete the review and approval process.
- B. It is understood and agreed that all calculations, drawings and specifications, whether in hard copy or machine-readable form, are intended for one-time use in the construction of the project for which this contract has been entered into.
- C. The CONSULTANT is not liable for claims, liabilities, or losses arising out of, or connected with the modification, or misuse by the LOCAL AGENCY of the machine-readable information and data provided by the CONSULTANT under this agreement; further, the CONSULTANT is not liable for claims, liabilities, or losses arising out of, or connected with any use by the LOCAL AGENCY of the project documentation on other projects for additions to this project, or for the completion of this project by others, except only such use as may be authorized in writing by the CONSULTANT.
- D. Applicable patent rights provisions described in 41 CFR 1-91, regarding rights to inventions shall be included in the Agreements as appropriate.

- E. The CONSULTANT is not liable for claims, liabilities or losses arising out of, or connected with, the modification or misuse by the LOCAL AGENCY of the machine readable information and data provided by the CONSULTANT under this agreement; further, the CONSULTANT is not liable for claims, liabilities or losses arising out of, or connected with, any use by the LOCAL AGENCY of the project documentation on other projects; for additions to this project, or for the completion of this project by others, except only such use as may be authorized, in writing, by the CONSULTANT.
- F. The LOCAL AGENCY may permit copyrighting reports or other agreement products. If copyrights are permitted; the agreement shall provide that the FHWA shall have the royalty-free nonexclusive and irrevocable right to reproduce, publish, or otherwise use; and to authorize others to use, the work for government purposes.
- G. Any subcontract in excess of \$25,000 entered into as a result of this contract, shall contain all of the provisions of this Article.

ARTICLE XXI CLAIMS FILED BY LOCAL AGENCY'S CONSTRUCTION CONTRACTOR

- A. If claims are filed by the LOCAL AGENCY's construction contractor relating to work performed by CONSULTANT's personnel, and additional information or assistance from the CONSULTANT's personnel is required in order to evaluate or defend against such claims; CONSULTANT agrees to make its personnel available for consultation with the LOCAL AGENCY'S construction contract administration and legal staff and for testimony, if necessary, at depositions and at trial or arbitration proceedings.
- B. CONSULTANT's personnel that the LOCAL AGENCY considers essential to assist in defending against construction contractor claims will be made available on reasonable notice from the LOCAL AGENCY. Consultation or testimony will be reimbursed at the same rates, including travel costs that are being paid for the CONSULTANT's personnel services under this agreement.
- C. Services of the CONSULTANT's personnel in connection with the LOCAL AGENCY's construction contractor claims will be performed pursuant to a written contract amendment, if necessary, extending the termination date of this agreement in order to finally resolve the claims.
- D. Any subcontract in excess of \$25,000 entered into as a result of this contract, shall contain all of the provisions of this Article.

ARTICLE XXII CONFIDENTIALITY OF DATA

- A. All financial, statistical, personal, technical, or other data and information relative to the LOCAL AGENCY's operations, which are designated confidential by the LOCAL AGENCY and made available to the CONSULTANT in order to carry out this contract, shall be protected by the CONSULTANT from unauthorized use and disclosure.
- B. Permission to disclose information on one occasion, or public hearing held by the LOCAL AGENCY relating to the contract, shall not authorize the CONSULTANT to further disclose such information, or disseminate the same on any other occasion.
- C. The CONSULTANT shall not comment publicly to the press or any other media regarding the contract or the LOCAL AGENCY's actions on the same, except to the LOCAL AGENCY's staff, CONSULTANT's own personnel involved in the performance of this contract, at public hearings or in response to questions from a Legislative committee.
- D. The CONSULTANT shall not issue any news release or public relations item of any nature, whatsoever, regarding work performed or to be performed under this contract without prior review of the contents thereof by the LOCAL AGENCY, and receipt of the LOCAL AGENCY'S written permission.

E. Any subcontract entered into as a result of this contract shall contain all of the provisions of this Article.

(For PS&E contracts add paragraph F, below, to paragraphs A through E, above.)

F. All information related to the construction estimate is confidential, and shall not be disclosed by the CONSULTANT to any entity other than the LOCAL AGENCY.

ARTICLE XXIII NATIONAL LABOR RELATIONS BOARD CERTIFICATION

In accordance with Public Contract Code Section 10296, the CONSULTANT hereby states under penalty of perjury that no more than one final unappealable finding of contempt of court by a federal court has been issued against the CONSULTANT within the immediately preceding two-year period, because of the CONSULTANT's failure to comply with an order of a federal court that orders the CONSULTANT to comply with an order of the National Labor Relations Board.

ARTICLE XXIV EVALUATION OF CONSULTANT

The CONSULTANT's performance will be evaluated by the LOCAL AGENCY. A copy of the evaluation will be sent to the CONSULTANT for comments. The evaluation together with the comments shall be retained as part of the contract record.

ARTICLE XXV STATEMENT OF COMPLIANCE

The CONSULTANT's signature affixed herein, and dated, shall constitute a certification under penalty of perjury under the laws of the State of California that the CONSULTANT has, unless exempt, complied with, the nondiscrimination program requirements of Government Code Section 12990 and Title 2, California Administrative Code, Section 8103.

ARTICLE XXVI DEBARMENT AND SUSPENSION CERTIFICATION

- A. The CONSULTANT's signature affixed herein, shall constitute a certification under penalty of perjury under the laws of the State of California, that the CONSULTANT has complied with Title 49, Code of Federal Regulations, Part 29, Debarment and Suspension Certificate, which certifies that he/she or any person associated therewith in the capacity of owner, partner, director, officer, or manager, is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency; has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three (3) years; does not have a proposed debarment pending; and has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years. Any exceptions to this certification must be disclosed to the LOCAL AGENCY.
- B. Exceptions will not necessarily result in denial of recommendation for award, but will be considered in determining CONSULTANT responsibility. Disclosures must indicate to whom exceptions apply, initiating agency, and dates of action.

ARTICLE XXVII STATE PREVAILING WAGE RATES

(Choose either Option 1 or Option 2.)

(Option 1 - For contracts where a portion of the work is to be performed are crafts affected by state labor laws, use paragraphs A and B.)

- A. The CONSULTANT shall comply with the State of California's General Prevailing Wage Rate requirements in accordance with California Labor Code, Section 177, and all federal, state, and local laws and ordinances applicable to the work.
- B. Any subcontract entered into as a result of this contract if for more than \$25,000 for public works construction or more than \$15,000 for the alteration, demolition, repair, or maintenance of public works, shall contain all of the provisions of this Article.

(Option 2 - Use only paragraph A below when all of the proposed work in the contract is performed by crafts not affected by state labor laws or are not contemplated for use.)

- A. The State of California's General Prevailing Wage Rates are not applicable to this contract.
Note: The Federal "Payment of Predetermined Minimum Wage" applies only to federal-aid construction contracts.

ARTICLE XXVIII CONFLICT OF INTEREST

- A. The CONSULTANT shall disclose any financial, business, or other relationship with LOCAL AGENCY that may have an impact upon the outcome of this contract, or any ensuing LOCAL AGENCY construction project. The CONSULTANT shall also list current clients who may have a financial interest in the outcome of this contract, or any ensuing LOCAL AGENCY construction project, which will follow.
- B. The CONSULTANT hereby certifies that it does not now have, nor shall it acquire any financial or business interest that would conflict with the performance of services under this agreement.
- C. Any subcontract in excess of \$25,000 entered into as a result of this contract, shall contain all of the provisions of this Article.

(Choose either Option 1 or Option 2 if appropriate.)

(Option 1 - Use paragraphs D & E below with paragraphs A, B and C above for PS&E contracts only.)

- D. The CONSULTANT hereby certifies that neither CONSULTANT, nor any firm affiliated with the CONSULTANT will bid on any construction contract, or on any contract to provide construction inspection for any construction project resulting from this contract. An affiliated firm is one, which is subject to the control of the same persons through joint-ownership, or otherwise.
- E. Except for subcontractors whose services are limited to providing surveying or materials testing information, no subcontractor who has provided design services in connection with this contract shall be eligible to bid on any construction contract, or on any contract to provide construction inspection for any construction project resulting from this contract.

(Option 2 - Use paragraphs D, E & F below with paragraphs A, B and C above for Construction Contract Administration contracts only.)

- D. The CONSULTANT hereby certifies that neither the CONSULTANT, its employees, nor any firm affiliated with the CONSULTANT providing services on this project prepared the Plans, Specifications, and Estimates for any construction project included within this contract.
An affiliated firm is one, which is subject to the control of the same persons through joint- ownership, or otherwise.
- E. The CONSULTANT further certifies that neither CONSULTANT, nor any firm affiliated with the CONSULTANT, will bid on any construction subcontracts included within the construction contract. Additionally, CONSULTANT certifies that no person working under this contract is also employed by the construction contractor for any project included within this contract.

- F. Except for subcontractors whose services are limited to materials testing, no subcontractor who is providing service on this contract shall have provided services on the design of any project included within this contract.

ARTICLE XXIX REBATES, KICKBACKS OR OTHER UNLAWFUL CONSIDERATION

The CONSULTANT warrants that this contract was not obtained or secured through rebates kickbacks or other unlawful consideration, either promised or paid to any LOCAL AGENCY employee. For breach or violation of this warranty, LOCAL AGENCY shall have the right in its discretion; to terminate the contract without liability; to pay only for the value of the work actually performed; or to deduct from the contract price; or otherwise recover the full amount of such rebate, kickback or other unlawful consideration.

ARTICLE XXX PROHIBITION OF EXPENDING LOCAL AGENCY STATE OR FEDERAL FUNDS FOR LOBBYING

(Include this article in all contracts where federal funding will exceed \$100,000. If less than \$100,000 in federal funds will be expended on the contract; delete this article and re-number the notification article which follows.)

- A. The CONSULTANT certifies to the best of his or her knowledge and belief that:
1. No state, federal or local agency appropriated funds have been paid, or will be paid by-or-on behalf of the CONSULTANT to any person for influencing or attempting to influence an officer or employee of any state or federal agency; a Member of the State Legislature or United States Congress; an officer or employee of the Legislature or Congress; or any employee of a Member of the Legislature or Congress, in connection with the awarding of any state or federal contract; the making of any state or federal grant; the making of any state or federal loan; the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any state or federal contract, grant, loan, or cooperative agreement.
 2. If any funds other than federal appropriated funds have been paid, or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency; a Member of Congress; an officer or employee of Congress, or an employee of a Member of Congress; in connection with this federal contract, grant, loan, or cooperative agreement; the CONSULTANT shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- B. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, US. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
- C. The CONSULTANT also agrees by signing this document that he or she shall require that the language of this certification be included in all lower-tier subcontracts, which exceed \$100,000, and that all such sub recipients shall certify and disclose accordingly.

ARTICLE XXXI NOTIFICATION

All notices hereunder and communications regarding interpretation of the terms of this contract and changes thereto, shall be effected by the mailing thereof by registered or certified mail, return receipt requested, postage prepaid, and addressed as follows:

CONSULTANT:

(CONSULTANT)

(NAME) _____, Project Manager

(ADDRESS)

LOCAL AGENCY:

(LOCAL AGENCY)

(NAME) _____, Contract Manager

(ADDRESS)

Retention**ARTICLE XXXII AGREEMENT**

The two parties to this agreement, who are the before named CONSULTANT and the before named LOCAL AGENCY, hereby agree that this agreement constitutes the entire agreement which is made and concluded in duplicate between the two parties. Both of these parties for and in consideration of the payments to made, conditions mentioned, and work to be performed; each agree to diligently perform in accordance with the terms and conditions of this agreement as evidenced by the signatures below.

ARTICLE XXXIII SIGNATURES

(Name of CONSULTANT)

(Name of LOCAL AGENCY)

(Signature)

(Name of Signer)

(Signature)

(Name of Signer)

DATE: _____

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